

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAMARCUS VARNADO, individually,)	Case No. 1:20-cv-02035
and on behalf of all other similarly)	
situated,)	Judge: Honorable Sharon J. Coleman
)	
Plaintiff,)	
)	
v.)	
)	
WEST LIBERTY FOODS, L.L.C., an)	
Iowa limited liability company,)	
)	
Defendant.)	
)	

**DEFENDANT WEST LIBERTY FOODS, L.L.C.’S MOTION TO DISMISS
PLAINTIFF’S CLASS ACTION COMPLAINT OR, IN THE ALTERNATIVE,
TO STAY THESE PROCEEDINGS**

COMES NOW Defendant West Liberty Foods, L.L.C. (“Defendant” or “WLF”) and moves to dismiss Plaintiff’s Class Action Complaint (“Complaint”) for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, to stay proceedings. In support thereof, Defendant submits an accompanying Memorandum of Law and states as follows:

1. Plaintiff’s Complaint raises two counts under the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.*, against WLF.
2. Count I alleges violations of 740 ILCS 14/15(b), and Count II alleges violations of 740 ILCS 14/15(a).

3. Plaintiff's Complaint should be dismissed in its entirety because Plaintiff's claims are untimely, and thus his Complaint fails to state a claim upon which relief can be granted under Rule 12(b)(6).

4. Second, Plaintiff alleges that he worked at WLF as both a temporary employee and as a regular employee. For the time period during which he was a WLF employee, as opposed to a temporary employee through a staffing agency, Plaintiff's exclusive remedy for alleged BIPA violations is the Illinois Workers' Compensation Act ("IWCA"). Therefore, timing issues aside, Plaintiff's claims during the period of his regular WLF employment should be dismissed as well.

5. Third, the Court should dismiss Plaintiff's allegations of intentional or reckless violations of BIPA under 740 ILCS 14/20(2) because they are insufficiently pleaded.

6. Finally, in the alternative, this Court should stay this action pending the Illinois Appellate Court's decisions in *Tims v. Black Horse Carriers* ("Tims"), 1-20-0563 (Ill. App. Ct. 1st. Dist.) and *McDonald v. Symphony Bronzeville, LLC* ("McDonald"), No. 1-19-2398 (Ill. App. Ct. 1st Dist.). In *Tims*, the court will address whether a one- or five-year limitations period applies to BIPA claims. In *McDonald*, the court will decide whether the IWCA preempts claims under BIPA. As explained further in WLF's supporting Memorandum of Law, the result of these decisions could prove case-dispositive here or at the very least would have a significant effect on the size and scope of this case. Thus, Defendant alternatively seeks a stay of these proceedings as a matter of judicial economy.

WHEREFORE, Defendant West Liberty Foods, L.L.C. respectfully requests this Court dismiss with prejudice Plaintiff's Complaint, his claims during his period as a regular WLF employee, and his claim for intentional or reckless violations; or, alternatively, stay these proceedings until the resolution of the *McDonald* and *Tims* appeals.

Dated: June 18, 2020

Respectfully submitted,

/s/ Shannon L. Sole

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**ATTORNEYS FOR DEFENDANT
WEST LIBERTY FOODS, L.L.C.**

CERTIFICATE OF SERVICE

The undersigned attorney hereby states that on June 18, 2020, she filed the foregoing document using the electronic filing system, which will send an email notification to the attorneys listed below. The foregoing document will also be served via overnight delivery upon all attorneys of record.

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s/ Shannon L. Sole